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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08.832.443	04/03/1997	STEPHEN D. WOLPE	1331-222C#M#	1001

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EXAMINER

SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 03/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

832443

Applicant(s)

WOLPE et al

Examiner /

SAUNDERS

Group Art Unit

1644

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 10/3/01, 10/12/01.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 47-52, 91-99 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 51-52 is/are allowed.
- ☒ Claim(s) 47-50, 95-97 is/are rejected.
- ☒ Claim(s) 91-94, 98-99 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other 32

Office Action Summary

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The claims pending and under examination are 47-52 and 91-99.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*There are no amendments*  
Applicant's response of 10/3/01 has overcome the previously stated 102, 103 and obviousness type double patenting rejection of Paper 27.

Claims 47, 49-50, 95 and 97 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 47, 49, 95 and 97 recitation of the peptide designated as SEQ ID NO: 4 is unclear. The same peptide has been designated as SEQ ID NO: 26 at page 82.

It is unclear which SEQ ID NO: is correct. Applicant must correct specification and, if necessary for the sake of consistency, provide a new Paper and electrically readable versions of the Sequence Listing.

Claims 47-48 and 95-96 are rejected under 35 U.S.C. 102(b) or (e) as being anticipated by Rosenthal et al. (WO 95/24213 or U.S. 5,631,219).

It is noted that applicant's recitation in these claims of alpha or beta chains is properly considered to encompass homologous and heterologous combinations of these in the form of dimers and multimers (paragraph spanning pages 20-21). Also note that the claim scope is open by virtue of reciting "comprising" in the preamble.

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Rosenthal et al. disclose tetramers comprised of four alpha or four beta globulin chain subunits of hemoglobin and pseudotetramers.; They also disclose various heterologous tetramers of alpha and beta chains. See col. 12, line 58 - col. 13, line 35. These constructs are taught as having a use in the "stimulation of hematopoiesis", which term encompasses the expansion of progenitor cells including pluripotent stem cells. See col. 6, line 64 - col. 7, line 26, especially at col. 7, lines 14-15. Thus Rosenthal et al. teach applicant's invention.

It is also noted that dosages taught at col. 17, lines 52-64 include higher level dosages that correspond to those taught by applicant as stem cell proliferating dosages at page 35. Thus Rosenthal et al's. taught dosages would inherently accomplish what applicant is claiming.

The statement of anticipation is considered proper absent 1) an explanation of why the examiner's interpretation of the claims and/or the reference is improper and/or 2) an introduction of claim language that negates the embodiments recited by applicant at page 21, lines 1-3.

Note that the corresponding WO publication of Rosenthal et al. is considered as constituting a 102 (b) reference, since applicant's parent application 08/627,173 (Pat. 5,861,483) does not provide descriptive support for any claims reciting "stem cell proliferating amount".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Saunders, Ph.D., whose telephone number is (703) 308-3976. The examiner can normally be reached on M-F from 8:15 a.m. to 4:45 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on (703) 308-3973. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

D. Saunders:jmr

Feb. 20, 2002

Feb. 21, 2002

*David A. Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
ART UNIT ~~182~~/644